



**US Army Corps
of Engineers**

Detroit District

Joint Public Notice

In Reply Refer To: Corps File No. 80-200-001-8

Date: February 20, 2004

Expires: (30 days) March 20, 2004

**PROPOSED MODIFICATION TO REGIONAL PERMIT FOR MICHIGAN 80-200-001;
For Limited Removal of Coastal Vegetation and Sand Leveling at Hotel and Motel
Waterfront Properties for Recreational Use and Water Access**

Project Location: The geographic area included in the Regional Permit includes the Michigan shoreline of Lakes Michigan, Huron, Superior, St. Clair and Erie; the connecting rivers, i.e., St. Mary's, St. Clair, and Detroit; and any coastal lake directly influenced by the above waters.

Background Information:

1. A Regional permit is a blanket permit that authorizes activities that are similar in nature and have been determined to cause only minimal adverse environmental impact when performed separately, and will have only a minimal adverse cumulative effect on the environment. Regional permits reduce costs, delays, and paperwork at all levels of government. If an activity qualifies for a regional permit, we would not charge any permit fee to provide a written verification to applicants that would allow them to proceed with the work. The authorized work could be performed as needed throughout the life of the enabling regional permit.
2. The Detroit District has previously issued authorizations under the Regional and Nationwide General Permits for Michigan to address the current extended period of below average water levels on the Great Lakes. These include allowance for minor sand leveling in non-vegetated shoreline areas, for construction of minor paths or elevated walkways to provide access to the water's edge, and an allowance for sand leveling operations in non-vegetated portions of Great Lakes publicly owned swimming areas. The District authorized sand leveling and paths on over 200 primarily single family residential properties in 2003.
3. We are proposing a regional permit to address situations where several years of below average water elevations on the Great Lakes has encouraged the development of wetland vegetation on exposed bottomlands in front of commercial lodging properties, which reduces access to and use of the water's edge by the customers of waterfront hotels and motels. Our preliminary determination is that there are numerous commercial hotel, motel, condominium complexes and resort properties providing multiple lodging units located on stretches of shoreline that periodically support extensive emergent wetland vegetation during extended periods of low water. These developed properties result in more extensive demand for water access than other

properties with less extensive use, where use of the existing general permits issued by the Detroit District would allow construction of narrow paths or walkways through vegetated areas.

4. Our preliminary review of the currently proposed addition to the Regional General Permit for vegetation removal on commercial hotel and motel properties shows that vegetation removal, and associated limited mechanical leveling and discharge of sand materials, if authorized in limited areas within this type of shoreline, could result in minimal impacts to the aquatic environment. We are inviting comments on the extent of potential impacts of this proposal, on the proposed conditions listed below, and on what technical criteria should be used to define the areas for which the permit would be applicable.

Project Description: The Regional Permit would authorize limited mechanical work or discharge of dredged or fill material involving the relocation of sand waterward of the Ordinary High Water Mark (OHWM) and shoreward of the water's edge, including the redistribution, grading and/or sidecasting of material for the purposes of removing wetland vegetation which has been encouraged to establish during an extended period of low water and leveling of a surface for access to the water's edge and providing for a recreational area. **We propose that commercial hotels and motels (as defined in the Glossary), would be allowed to clear wetland vegetation from up to one quarter of their water frontage, not to exceed an area 100 feet wide as measured along the shoreline. Sand leveling and the addition of a six-inch layer of sand would also be allowed within the same restricted work area to provide a solid base for pedestrian use of the area. Sand materials could be obtained from above or below the OHWM, so long as the total width of the work area does not exceed the limits stated above.** We are seeking public comments on the following conditions for this category of work under the Regional Permit:

1. The party proposing to do the work must submit Pages 1 and 2 of the Joint Permit Application for a U.S. Army Corps of Engineers and Michigan Department of Environmental Quality permit, and receive written authorization to proceed, prior to the commencement of work. A location map, a plan view, and a written description of the proposed work, and a **statement documenting that the property in question is in fact a commercial hotel or motel or similar property (see Glossary) and providing the number of rooms available for paying guests** must accompany the two-page application form.
2. Any relocated material must be sand obtained from the parcel being considered for grading or the immediate adjacent riparian parcels (with the permission of those property owners), and must be obtained from a non-wetland area, or from within the authorized work limits below the OHWM. No work would be authorized waterward of the water's edge, that is, sand materials may not be obtained from beyond the standing water line.
3. The work area substrate is predominately sand where vegetation has been encouraged to

develop during an extended period of low water levels. Sand material may not be discharged over areas of predominately organic substrate, nor may organic substrates be excavated and replaced with sandy substrate.

4. Full advantage has been taken for recreation use and water access in or through any non-vegetated areas on the subject property.
5. The applicant must provide written permission from the property owner to obtain sand from off the project site property.
6. A site inspection has been performed by Corps of Engineers personnel to verify these conditions.

The proposed Regional General Permit would not apply to:

- a. Activities which would impact historical, cultural, or archaeological resources or practices as provided in the National Historic Preservation Act of 1966 and the Archaeological and Historic Preservation Act of 1974.
- b. Designated environmental areas under the State of Michigan Shorelands Protection and Management Act (1972 Public Act 245, as amended) or the Natural Resource and Environmental Protection Act (1994 Public Act 451, as amended), stream corridors designated under the Natural River Act (1970 Public Act 231) promulgated by Michigan Department of Natural Resources (now Michigan Department of Environmental Quality (MDEQ)), and areas dedicated or designated under the Wilderness and Natural Areas Act (1972 Public Act 241).
- c. Any other areas named in Acts of Congress or Presidential Proclamations as National Wildlife Refuges, National Rivers, components of the National Wild and Scenic River System, National Wilderness Areas, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal law for similar and related purposes.
- d. Wetland areas designated as unsuitable for discharge under the U.S. Environmental Protection Agency's Advanced Identification Program.

The proposed Regional General Permit would not:

- a. Obviate the need for any other federal, state, or local permit.
- b. Authorize work or equipment lakeward of the still-water shoreline. (Shoreline means the line where surface water meets the land under current still-water conditions).
- c. Convey property rights in either real estate or material, nor would it authorize any injury to private property or invasion of public or private rights in the public trust bottomlands.
- d. Apply to activities that would affect Federally listed endangered, threatened, or proposed

species. All applications would be screened for possible impacts through the established SLOPES procedures developed in consultation with the U.S. Fish and Wildlife Service.

Authority: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Under Section 10, a Corps permit is required for any structures or work in or affecting navigable waters of the United States. Structures or work are in navigable waters of the U.S. if they occur waterward of a line on the shore known as the Ordinary High Water Mark (OHWM). Section 404 requires a Corps permit for the discharge of dredged or fill material into waters of the United States including adjacent wetlands. Projects involving discharges of dredged material incidental to certain activities such as grading, mechanized land clearing, raking, disking, plowing, ditching or other excavation activity, and/or dragging constitute work under Section 10 and discharges of dredged material under Section 404.

Section 401 of the Clean Water Act requires that all discharges of dredged or fill material must be certified by the State as complying with applicable effluent limitations and water quality standards. This public notice serves as an application to the State of Michigan Department of Environmental Quality, Land and Water Management Division (MDEQ) and constitutes its public notice as required by Section 401 of the Act. Coastal Zone Management Certification (or waiver thereof) is required from the State of Michigan.

Comments: We are publishing this notice in compliance with Title 33 Code of Federal Regulations Parts 320-330. Interested parties and agencies desiring to express their views concerning the proposed regional permit should do so by written comment postmarked or delivered in person by the expiration date of this public notice. Comments of a positive or negative nature may be submitted. All responses must refer to file number 80-200-001-8. We will interpret a lack of response as meaning that there is no objection to the proposed general permits. Comments should be filed with:

- a. John Konik, Chief, Permit Evaluation Branch A, Regulatory Office, Detroit District, Corps of Engineers, P.O. Box 1027, Detroit, Michigan 48231.
- b. State permit and/or water quality certification comments should be filed with the Michigan Department of Environmental Quality (MDEQ), Land and Water Management Division, P.O. Box 30204, Lansing, Michigan 48909.

Public Hearing: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this general permit. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

Evaluation: The decision whether to issue the Department of the Army permit will be based on an evaluation of the probable impacts of the proposed activities authorized by the general permit on the public interest. These decisions will reflect the national concerns for both protection and

utilization of important resources. The benefit which reasonably may be expected to accrue from the permits must be balanced against their reasonably foreseeable detriments. All factors which may be relevant to the permits will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed general permits. Any comments received will be considered by the Corps of Engineers to determine whether or not to issue the Regional permit for the activities described herein. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of activities proposed to be authorized by this Regional Permit.

The activities authorized by the proposed regional permit involve the discharge of dredged or fill material into waters of the United States. Therefore, the U.S. Army Corps of Engineers' evaluation of the impact of the activities on the public interest will include application of the guidelines promulgated by the Administrator of the Federal Environmental Protection Agency, under the authority of Section 404(b)(1) of the Clean Water Act.

Additional Information: Questions concerning this application may be directed to Tom Allenson, Project Manager, at the Corps of Engineers address listed above, or telephone number (313) 226-2221.

FOR THE DISTRICT ENGINEER:

Gary R. Mannesto
Chief, Regulatory Office
Engineering & Technical Services

NOTICE TO POSTMASTERS:

We request that the above notice be conspicuously and continuously posted for the time period of this notice.

GLOSSARY

Ordinary High Water Mark (OHWM) - Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the OHWM. On non-tidal waters, it is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. In Michigan, the OHWM has been established as the line on the shore coincident with the following elevation contours: Lake Superior, 603.1'; Lakes Michigan and Huron, 581.5'; Lake St. Clair, 576.3'; Lake Erie, 573.4' and accounting for lake influence and stream gradient or elevation in the connecting waters, based on 1985 International Great Lakes Datum.

Emergent Wetland Vegetation – Plants whose base typically grows in flooded or saturated conditions.

Leveling of Sand - Relocation of sandy materials from either above or below the Ordinary High Water Mark to level uneven areas on exposed areas below the Ordinary High Water Mark.

SLOPES – The acronym for Standard Local Operating Procedures for Endangered Species that is used by the U.S. Fish and Wildlife Service, East Lansing Field Office and the Detroit District, U.S. Army Corps of Engineers to ensure they effectively carry out their mutual responsibilities under the Endangered Species Act, and to maintain an efficient review process.

Waterfront Hotel/Motel – A business enterprise in which the principal use of the property is for providing multiple rental units for paying guests, to include hotels, motels, inns, resorts, condominium complexes, or the like, located on a Great Lake, Lake St. Clair, connecting rivers, or coastal lakes connected to one of the Great Lakes with a minimum of 100 feet of shoreline frontage.